IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 40 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

THE ROHIT MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 40 of 1998
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 27/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion for assessment year 1980-81 :-

"Whether reimbursement of medical expenses and group insurance premium are to be excluded in computing disallowance u/s.40(c) of the I.T. Act, 1961 ?"

2. We have heard Mrs Mona Bhatt for Mr Manish R Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The question consists of two parts - the first part with regard to medical expenses and the second part regarding group insurance premium.

Our attention has been invited to the order dated 4.12.2002 in Income-tax Reference No.269 of 1987 in respect of this very assessee wherein this Court considered the question of reimbursement of medical expenses in the following terms :-

"Whether, in law and on facts, reimbursement of medical expenses is required to be excluded while computing disallowance under section 40(c) of the Income-tax Act, 1961 ?"

After referring to the decision of this Court in Ambica Mills Ltd. vs. CIT, 235 ITR 264, this Court answered the question in the negative because the expenditure incurred is not to be excluded while computing the disallowance under section 40(c) of the Act.

Following the aforesaid decision, our answer to the first part of the question regarding medical expenses is in the negative i.e. in favour of the revenue and against the assessee.

4. Coming to the second part of the question regarding reimbursement of group insurance premium, in the aforesaid decision dated 4.12.2002, this Court considered the question regarding premium paid for personal accident insurance policy of the Director. In Ambica Mills Ltd. vs CIT, 235 ITR 264, this Court held that the matter whether it was intended to be a benefit to the director or not, would depend upon the nature of the policy, who had taken it out and whose obligation it is to pay the premiums. If the Company had, by taking out such policy of insuring the directors against personal accidents sought in fact to insure itself in respect of the liability that may arise towards the directors as a result of accident, then that situation would be different from a director himself taking out a

personal accident insurance under which he would be obliged to pay the premiums and not the Company. If such premiums are to be reimbursed to the director which is the obligation of the director himself to pay and not that of the Company, qua the insurance Company, then that would amount to a benefit to the director.

Since in the matter of premium for personal accident insurance policy of the director, this Court answered the question in favour of the assessee and against the revenue, on facts and in the circumstances of the present case, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

5. Accordingly, our answer to the first part of the question, regarding medical expenses, is in the negative i.e. in favour of the revenue and against the assessee whereas our answer to the second part of the question, regarding group insurance premium, is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-